

REMARKS/ARGUMENTS

Applicant responds herein to the Office Action dated March 20, 2009. A Petition for Extension of Time (three months) and the fee therefor are submitted herewith.

Claims 1-3 have been examined. Claim 2 was rejected under the second paragraph of 35 U.S.C. §112. The applicant has responded by amending claim 2 and requests withdrawal of said rejection.

Substantively, claims 1-3 are stated to be obvious over Ishino (5,861,184), in view of Guarino (5,863,578) and further in view of Hayes (D386,081). Reconsideration is requested in view of the amendments to the claims herein and the following remarks.

Preliminarily, applicant advises the Examiner that application serial no. 10/570,016 contains similar subject matter and that the same above-mentioned three references were used in said 10/570,016 application.

The product in independent claim 1 combines mechanical structures, as well as the food products themselves. The food product is a shaped and frozen form of boiled rice, with sushi material placed thereon. The food product is located on an open-top plastic box and that box, with the food thereon is placed in a vacuumed and hermetically sealed microwave-safe plastic packing bag. When the plastic packaging bag with the food therein are placed in a microwave oven, which is turned on for a predetermined time period, the boiled rice portion of the food is so formed that it gives off (inherently pressurized) steam which thereafter creates the “space” in the plastic packaging bag, around both the boiled rice and the sushi product.

The packing bag is so constructed, that the space that forms (in response to the steam) has a volume of 0.2 to 0.6 times that of the sushi product. Significantly, however, the boiled rice and the sushi, as well as the space, are carefully engineered so that the microwaving process is not the means by which the sushi product attains its ultimate desired temperature. Were the microwaving process allowed to continue long enough as to actually heat the sushi, that microwave heating process (as described in the specification) would be uneven and the temperature of certain portions of the sushi would exceed the maximum limits, with adverse impact.

Instead, according to the invention, the sushi material is not driven to its desired temperature by microwaving. Rather, the volume, amount and consistency of the boiled rice relative to the sushi product and relative to the size of the packing bag is such that it is the steam filling and circulating in

the package bag that contacts uniformly and evenly the sushi product to heat it uniformly until the sushi product achieves the desired ultimate temperature.

Claim 1 is not a process claim. But rather, the recitation in claim 1, of the nature of the frozen boiled rice, and of the size and location and the plastic packaging bag and the placement of the food in the open-top plastic box that all combine with one another to create this very beneficial effect, as described in the instant specification.

Turning to the references, the Examiner relies on Ishino, which discloses a sushi, vacuumed sealed in a bag, to be combined with Hayes, which describes a food tray. The Office Action then suggests turning to Guarino for the proposition that it is well known to package sea food in a package which itself becomes a steam container for microwaving. The Office Action concedes that Guarino does not explicitly disclose that the space around the sushi product has a volume of 0.2 to 0.6 times that of the product, but contends that it would be obvious to find that range.

In fact, the Hayes reference is not actually a microwave container. Nothing in this reference teaches that it is suitable for being used in a microwave oven or that it has any purpose for being provided in a bag containing food where the bag is microwavable. Indeed, given Guarino's disclosure, it would seem superfluous to place the food in a container.

But in the product of claim 1, it is important to do so, because the container contributes to the effect that the steam is channeled around the food product and over the space that forms in the plastic bag, to uniformly heat the sushi product. None of the references even address the issue of the size of the food relative to the overall size that forms within the plastic bag. This is because nowhere in the prior art is it recognized that there is any relevance or importance to such a measurement. To the contrary, Guarino actually teaches away from providing a space around the sea food, let alone a space of the specified dimension. This is evident from Guarino's specification at col. 3, lines 2-9, which state:

“...It is necessary that the bag fit tightly to help hold the shrimp or fish...so they can be successfully microwaved...”

Spacing is not required by Guarino, since the fish is either covered with sauce or packaged in a wet state. The sea food is then microwaved, with steam being internally generated by contained moisture, as described at col. 3, lines 31-57 of this reference. This is further described at col. 6, lines 16-18, as the sauce being sucked into the fish product during the vacuum sealing process. Therefore, the fish product itself is inherently and instantly heated by the microwaving process with all the

attendant difficulties of achieving a uniform temperature in the fish product, without overheating, as described in the background section of the instant specification.

Moreover, the steaming in Guarino which occurs during the microwaving phase itself is an essential step relative to the cooking and heating of the seafood product. The microwaving with attendant internal steam generation effectively cooks the seafood product for immediate use after microwaving (col. 3, lines 56-57). This is contrary to the object of this invention, and teaches against providing either the container or the particular space dimension.

A space around the seafood product, as presently claimed, is actually taught away by Guarino since, as described at col. 7, lines 5-15, as steaming takes place during the step of microwaving, the bag 16 remains airtight as the pressure increases, so as to force the sauce into the fish product. To do so, it is rather clear that Guarino must maintain the pressure within the package either by eliminating or minimizing spacing.

But in claim 1 herein, the actual heating and raising of the temperature of the fish product in a very uniform manner, in a manner which assures that no portion of the sushi is overheated, requires that the sushi be heated by steam left after microwaving, rather than by the initial microwaving process itself. This is not achieved except by means of the very innovative apportionment of the food product relative to the "space", as set forth in the instant claim 1.

Accordingly, it is submitted that claim 1 clearly distinguishes over the prior art of record. The remaining claims include the limitations of claim 1 and impose further limitations thereon, which distance them even further from the prior art.

Accordingly, the Examiner is respectfully requested to reconsider the application, allow the claims as amended and pass this case to issue.

Respectfully submitted,

THIS CORRESPONDENCE IS BEING
SUBMITTED ELECTRONICALLY
THROUGH THE UNITED STATES
PATENT AND TRADEMARK OFFICE
EFS FILING SYSTEM
ON SEPTEMBER 21, 2009



MAX MOSKOWITZ
Registration No.: 30,576
OSTROLENK FABER LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700